

Adopted	Rejected
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COMMITTEE REPORT

YES:	10
NO:	0

MR. SPEAKER:

Your Committee on Local Government, to which was referred Senate Bill 446, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:

- 1 Page 4, line 8, delete "29(d)" and insert "**29(e)**".
- 2 Page 4, between lines 21 and 22, begin a new paragraph and insert:
- 3 "SECTION 4. IC 13-26-5-2 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. A district may
- 5 do the following:
- 6 (1) Sue or be sued.
- 7 (2) Make contracts in the exercise of the rights, powers, and duties
- 8 conferred upon the district.
- 9 (3) Adopt and alter a seal and use the seal by causing the seal to
- 10 be impressed, affixed, reproduced, or otherwise used. However,
- 11 the failure to affix a seal does not affect the validity of an
- 12 instrument.
- 13 (4) Adopt, amend, and repeal the following:
- 14 (A) Bylaws for the administration of the district's affairs.
- 15 (B) Rules and regulations for the following:
- 16 (i) The control of the administration and operation of the

- 1 district's service and facilities.
- 2 (ii) The exercise of all of the district's rights of ownership.
- 3 (5) Construct, acquire, lease, operate, or manage works and obtain
- 4 rights, easements, licenses, money, contracts, accounts, liens,
- 5 books, records, maps, or other property, whether real, personal, or
- 6 mixed, of a person or an eligible entity.
- 7 (6) Assume in whole or in part any liability or obligation of:
- 8 (A) a person;
- 9 (B) a nonprofit water, sewage, or solid waste project system;
- 10 or
- 11 (C) an eligible entity;
- 12 including a pledge of part or all of the net revenues of a works to
- 13 the debt service on outstanding bonds of an entity in whole or in
- 14 part in the district and including a right on the part of the district
- 15 to indemnify and protect a contracting party from loss or liability
- 16 by reason of the failure of the district to perform an agreement
- 17 assumed by the district or to act or discharge an obligation.
- 18 (7) Fix, alter, charge, and collect reasonable rates and other
- 19 charges in the area served by the district's facilities to every
- 20 person whose premises are, whether directly or indirectly,
- 21 supplied with water or provided with sewage or solid waste
- 22 services by the facilities for the purpose of providing for the
- 23 following:
- 24 (A) The payment of the expenses of the district.
- 25 (B) The construction, acquisition, improvement, extension,
- 26 repair, maintenance, and operation of the district's facilities and
- 27 properties.
- 28 (C) The payment of principal or interest on the district's
- 29 obligations.
- 30 (D) To fulfill the terms of agreements made with:
- 31 (i) the purchasers or holders of any obligations; or
- 32 (ii) a person or an eligible entity.
- 33 (8) Except as provided in section 2.5 of this chapter, require
- 34 connection to the district's sewer system of property producing
- 35 sewage or similar waste and require the discontinuance of use of
- 36 privies, cesspools, septic tanks, and similar structures if:
- 37 (A) there is an available sanitary sewer within three hundred
- 38 (300) feet of the property line; and

1 (B) the district has given written notice by certified mail to the
2 property owner at the address of the property at least ninety
3 (90) days before a date for connection to be stated in the
4 notice.

5 **However, a district may not require a property owner to**
6 **connect to the district's sewer system if the property owner is**
7 **already connected to a sewer system that was approved by a**
8 **state governmental entity.**

9 (9) Provide by ordinance for reasonable penalties for failure to
10 connect and also apply to the circuit or superior court of the
11 county in which the property is located for an order to force
12 connection, with the cost of the action, including reasonable
13 attorney's fees of the district, to be assessed by the court against
14 the property owner in the action.

15 (10) Refuse the services of the district's facilities if the rates or
16 other charges are not paid by the user.

17 (11) Control and supervise all property, works, easements,
18 licenses, money, contracts, accounts, liens, books, records, maps,
19 or other property rights and interests conveyed, delivered,
20 transferred, or assigned to the district.

21 (12) Construct, acquire by purchase or otherwise, operate, lease,
22 preserve, and maintain works considered necessary to accomplish
23 the purposes of the district's establishment within or outside the
24 district and enter into contracts for the operation of works owned,
25 leased, or held by another entity, whether public or private.

26 (13) Hold, encumber, control, acquire by donation, purchase, or
27 condemnation, construct, own, lease as lessee or lessor, use, and
28 sell interests in real and personal property or franchises within or
29 outside the district for:

30 (A) the location or protection of works;

31 (B) the relocation of buildings, structures, and improvements
32 situated on land required by the district or for any other
33 necessary purpose; or

34 (C) obtaining or storing material to be used in constructing and
35 maintaining the works.

36 (14) Upon consent of two-thirds (2/3) of the members of the
37 board, merge or combine with another district into a single district
38 on terms so that the surviving district:

- 1 (A) is possessed of all rights, franchises, and authority of the
 2 constituent districts; and
 3 (B) is subject to all the liabilities, obligations, and duties of
 4 each of the constituent districts, with all rights of creditors of
 5 the constituent districts being preserved unimpaired.
- 6 (15) Provide by agreement with another eligible entity for the
 7 joint construction of works the district is authorized to construct
 8 if the construction is for the district's own benefit and that of the
 9 other entity. For this purpose the cooperating entities may jointly
 10 appropriate land either within or outside their respective borders
 11 if all subsequent proceedings, actions, powers, liabilities, rights,
 12 and duties are those set forth by statute.
- 13 (16) Enter into contracts with a person, an eligible entity, the state,
 14 or the United States to provide services to the contracting party for
 15 any of the following:
- 16 (A) The distribution or purification of water.
 17 (B) The collection or treatment of sanitary sewage.
 18 (C) The collection, disposal, or recovery of solid waste.
- 19 (17) Make provision for, contract for, or sell the district's
 20 byproducts or waste.
- 21 (18) Exercise the power of eminent domain.
- 22 (19) Remove or change the location of a fence, building, railroad,
 23 canal, or other structure or improvement located within or outside
 24 the district. If:
- 25 (A) it is not feasible or economical to move the building,
 26 structure, or improvement situated in or upon land acquired;
 27 and
 28 (B) the cost is determined by the board to be less than that of
 29 purchase or condemnation;
 30 the district may acquire land and construct, acquire, or install
 31 buildings, structures, or improvements similar in purpose to be
 32 exchanged for the buildings, structures, or improvements under
 33 contracts entered into between the owner and the district.
- 34 (20) Employ consulting engineers, superintendents, managers, and
 35 other engineering, construction, and accounting experts, attorneys,
 36 bond counsel, employees, and agents that are necessary for the
 37 accomplishment of the district's purpose and fix their
 38 compensation.

(21) Procure insurance against loss to the district by reason of damages to the district's properties, works, or improvements resulting from fire, theft, accident, or other casualty or because of the liability of the district for damages to persons or property occurring in the operations of the district's works and improvements or the conduct of the district's activities.

(22) Exercise the powers of the district without obtaining the consent of other eligible entities. However, the district shall:

(A) restore or repair all public or private property damaged in carrying out the powers of the district and place the property in the property's original condition as nearly as practicable; or

(B) pay adequate compensation for the property.

(23) Dispose of, by public or private sale or lease, real or personal property determined by the board to be no longer necessary or needed for the operation or purposes of the district.

SECTION 5. IC 13-26-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

Sec. 2. (a) Except as provided in subsection (b), the rates or charges for a sewage works may be determined based on the following:

(1) A flat charge for each connection.

(2) The amount of water used on the premises.

(3) The number and size of water outlets on the premises.

(4) The amount, strength, or character of sewage discharged into the sewers.

(5) The size of sewer connections.

(6) Whether the property served has been or will be required to pay separately for the cost of any of the facilities of the works.

(7) A combination of these or other factors that the board determines is necessary to establish nondiscriminatory, just, and equitable rates or charges.

(b) ~~This subsection applies only to a district in which a campground brought a legal action after January 1, 2000, and before April 1, 2003, against a board concerning sewage service billed at a flat rate.~~ If a campground is billed for sewage service at a flat rate under subsection (a), the campground may instead elect to be billed for the sewage service under this subsection by installing, at the campground's expense, a meter to measure the actual amount of sewage discharged by the campground into the sewers. ~~for one (1) year. The highest meter~~

reading for a calendar week for the campground during the year shall be used to determine the resident equivalent units for the campground.

If a campground elects to be billed by use of a meter:

(1) the rate charged by a board for the metered sewage service may not exceed the rate charged to residential customers for equivalent usage; and

(2) the amount charged by a board for the campground's monthly sewage service for the period beginning September 1 and ending May 31 must be equal to the greater of:

(A) the actual amount that would be charged for the sewage discharged during the month by the campground as measured by the meter; or

(B) the lowest monthly charge paid by the campground for sewage service during the previous period beginning June 1 and ending August 31.

(c) If a campground does not install a meter under subsection (b) and is billed for sewage service at a flat rate under subsection (a), for a calendar year beginning after December 31, 2004, each campsite at the campground may not equal more than one-third (1/3) of one (1) resident equivalent unit. The basic monthly charge for the campground's sewage service must be equal to the number of the campground's resident equivalent units multiplied by the rate charged by the board for a resident unit.

(d) The board may impose additional charges on a campground under ~~this subsection~~ **subsections (b) and (c)** if the board incurs additional costs that are caused by any unique factors that apply to providing sewage service for the campground, including, but not limited to:

(1) the installation of:

(A) oversized pipe; or

(B) any other unique equipment;

necessary to provide sewage service for the campground; and

(2) ~~excessive concentrations of~~ biochemical oxygen demand (BOD) **that exceed federal pollutant standards.**

SECTION 6. IC 13-26-11-2.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 2.1. (a) As used in this section, "commission" refers to the Indiana utility**

1 regulatory commission created by IC 8-1-1-2.

2 (b) This section applies to an owner or operator of a
3 campground described in section 2(b) or 2(c) of this chapter who
4 disputes:

5 (1) that the campground is being billed at rates charged to
6 residential customers for equivalent usage as required by
7 section 2(b)(1) of this chapter;

8 (2) the number of resident equivalent units determined for the
9 campground under section 2(c) of this chapter; or

10 (3) that any additional charges imposed on the campground
11 under section 2(d) of this chapter are reasonable or
12 nondiscriminatory.

13 (c) If an owner or operator:

14 (1) makes a good faith attempt to resolve a disputed matter
15 described in subsection (b)(1) through (b)(3) through:

16 (A) any grievance or complaint procedure prescribed by
17 the board; or

18 (B) other negotiations with the board; and

19 (2) is dissatisfied with the board's proposed disposition of the
20 matter;

21 the owner or operator may file with the commission a written
22 request for review of the disputed matter and the board's proposed
23 disposition of the matter to be conducted by the commission's
24 appeals division established under IC 8-1-2-34.5(b). The owner or
25 operator must file a request under this section with the commission
26 and the board not later than seven (7) days after receiving notice
27 of the board's proposed disposition of the matter.

28 (d) The commission's appeals division shall provide an informal
29 review of the disputed matter. The review must include a prompt
30 and thorough investigation of the dispute. Upon request by either
31 party, or on the division's own motion, the division shall require the
32 parties to attend a conference on the matter at a date, time, and
33 place determined by the division.

34 (e) In any case in which the basic monthly charge for a
35 campground's sewage service is in dispute, the owner or operator
36 shall pay, on any disputed bill issued while a review under this
37 section is pending, the basic monthly charge billed during the year
38 immediately preceding the year in which the first disputed bill is

1 issued. If the basic monthly charge paid while the review is pending
 2 exceeds any monthly charge determined by the commission in a
 3 decision issued under subsection (f), the board shall refund or
 4 credit the excess amount paid to the owner or operator. If the basic
 5 monthly charge paid while the review is pending is less than any
 6 monthly charge determined by the appeals division or commission
 7 in a decision issued under subsection (f), the owner or operator
 8 shall pay the board the difference owed.

9 (f) After conducting the review required under subsection (d),
 10 the appeals division shall issue a written decision resolving the
 11 disputed matter. The division shall send a copy of the decision to:

12 (1) the owner or operator of the campground; and

13 (2) the board;

14 by United States mail. Not later than seven (7) days after receiving
 15 the written decision of the appeals division, either party may make
 16 a written request for the dispute to be formally docketed as a
 17 proceeding before the commission. Subject to the right of either
 18 party to an appeal under IC 8-1-3, the decision of the commission
 19 is final.

20 (g) The commission shall maintain a record of all requests for a
 21 review made under this section. The record must include:

22 (1) a copy of the appeals division's and commission's decision
 23 under subsection (f) for each dispute filed; and

24 (2) any other documents filed with the appeals division or
 25 commission under this section.

26 The record must be made available for public inspection and
 27 copying in the office of the commission during regular business
 28 hours under IC 5-14-3.

29 (h) The right of a campground owner or operator to request a
 30 review under this section is in addition to the right of the
 31 campground owner or operator to file a petition under section 15
 32 of this chapter as a freeholder of the district.

33 (i) The commission may adopt rules under IC 4-22-2 to
 34 implement this section."

35 Page 4, between lines 34 and 35, begin a new paragraph and insert:

36 "SECTION 8. IC 36-1-6-2 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) If a condition
 38 violating an ordinance of a municipal corporation exists on real

property, officers of the municipal corporation may enter onto that property and take appropriate action to bring the property into compliance with the ordinance. However, before action to bring compliance may be taken, all persons holding a substantial interest in the property must be given a reasonable opportunity of at least ten (10) days but not more than sixty (60) days to bring the property into compliance. If the municipal corporation takes action to bring compliance, the expenses incurred by the municipal corporation to bring compliance constitute a lien against the property. **The lien attaches when notice of the lien is recorded in the office of the county recorder in which the property is located.** The lien is superior to all other liens except liens for taxes, in an amount that does not exceed:

(1) two thousand five hundred dollars (\$2,500) for real property that:

(A) contains one (1) or more occupied or unoccupied single or double family dwellings or the appurtenances or additions to those dwellings; or

(B) is unimproved; or

(2) ten thousand dollars (\$10,000) for all other real property not described in subdivision (1).

(b) The municipal corporation may issue a bill to the owner of the real property for the costs incurred by the municipal corporation in bringing the property into compliance with the ordinance, including administrative costs and removal costs.

~~(c) If the owner of the real property fails to pay a bill issued under subsection (b), the municipal corporation may, after thirty (30) days, certify to the county auditor the amount of the bill, plus any additional administrative costs incurred in the certification. The auditor shall place the total amount certified on the tax duplicate for the property affected, and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to the general fund of the municipal corporation.~~

(c) A bill issued under subsection (b) is delinquent if the owner of the real property fails to pay the bill within thirty (30) days after the date of the issuance of the bill.

(d) Whenever a municipal corporation determines it necessary, the officer charged with the collection of fees and penalties for the

1 municipal corporation shall prepare:

2 (1) a list of delinquent fees and penalties that are enforceable
3 under this section, including:

4 (A) the name or names of the owner or owners of each lot
5 or parcel of real property on which fees are delinquent;

6 (B) a description of the premises, as shown on the records
7 of the county auditor; and

8 (C) the amount of the delinquent fees and the penalty; or

9 (2) an instrument for each lot or parcel of real property on
10 which the fees are delinquent.

11 (e) The officer shall record a copy of each list or each instrument
12 with the county recorder, who shall charge a fee for recording the
13 list or instrument under the fee schedule established in
14 IC 36-2-7-10.

15 (f) The amount of a lien shall be placed on the tax duplicate by
16 the auditor. The total amount, including any accrued interest, shall
17 be collected in the same manner as delinquent taxes are collected
18 and shall be disbursed to the general fund of the municipal
19 corporation.

20 (g) A fee is not enforceable as a lien against a subsequent owner
21 of property unless the lien for the fee was recorded with the county
22 recorder before conveyance to the subsequent owner. If the
23 property is conveyed before the lien is recorded, the municipal
24 corporation shall notify the person who owned the property at the
25 time the fee became payable. The notice must inform the person
26 that payment, including penalty fees for delinquencies, is due not
27 less than fifteen (15) days after the date of the notice. If payment is
28 not received within one hundred eighty (180) days after the date of
29 the notice, the amount due may be considered a bad debt loss.

30 (h) The municipal corporation shall release:

31 (1) liens filed with the county recorder after the recorded date
32 of conveyance of the property; and

33 (2) delinquent fees incurred by the seller;

34 upon receipt of a written demand from the purchaser or a
35 representative of the title insurance company or the title insurance
36 company's agent that issued a title insurance policy to the
37 purchaser. The demand must state that the delinquent fees were
38 not incurred by the purchaser as a user, lessee, or previous owner

1 **and that the purchaser has not been paid by the seller for the**
 2 **delinquent fees.**

3 **(i) The county auditor shall remove the fees, penalties, and**
 4 **service charges that were not recorded before a recorded**
 5 **conveyance to a subsequent owner upon receipt of a copy of the**
 6 **written demand under subsection (h).**

7 SECTION 9. IC 36-2-11-16 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) This section
 9 does not apply to:

- 10 (1) an instrument executed before November 4, 1943;
- 11 (2) a judgment, order, or writ of a court;
- 12 (3) a will or death certificate; or
- 13 (4) an instrument executed or acknowledged outside Indiana.

14 (b) Whenever this section prescribes that the name of a person be
 15 printed, typewritten, or stamped immediately beneath ~~his~~ **the person's**
 16 signature, the signature must be written on the instrument, directly
 17 preceding the printed, typewritten, or stamped name, and may not be
 18 superimposed on that name so as to render either illegible. However,
 19 the instrument may be received for record if the name and signature are,
 20 in the discretion of the county recorder, placed on the instrument so as
 21 to render the connection between the two apparent.

22 (c) The recorder may receive for record an instrument only if:

- 23 (1) the name of each person who executed the instrument is
- 24 legibly printed, typewritten, or stamped immediately beneath ~~his~~
 25 **the person's** signature or the signature itself is printed,
 26 typewritten, or stamped;
- 27 (2) the name of each witness to the instrument is legibly printed,
- 28 typewritten, or stamped immediately beneath ~~his~~ **the witness's**
 29 signature or the signature itself is printed, typewritten, or stamped;
- 30 (3) the name of each notary public whose signature appears on the
- 31 instrument is legibly printed, typewritten, or stamped immediately
 32 beneath ~~his~~ **the notary's** signature or the signature itself is
 33 printed, typewritten, or stamped; and
- 34 (4) the name of each person who executed the instrument appears
 35 identically in the body of the instrument, in the acknowledgment
 36 or jurat, in ~~his~~ **the person's** signature, and beneath ~~his~~ **the**
 37 **person's** signature;

38 or if subsection (d) is complied with.

(d) The recorder may receive for record an instrument that does not comply with subsection (c) if:

- (1) a printed or typewritten affidavit of a person with personal knowledge of the facts is recorded with the instrument;
- (2) the affidavit complies with this section;
- (3) the affidavit states the correct name of a person, if any, whose signature cannot be identified or whose name is not printed, typewritten, or stamped on the instrument as prescribed by this section; and
- (4) when the instrument does not comply with subsection (c)(4), the affidavit states the correct name of the person and states that each of the names used in the instrument refers to the person.

(e) The recorder ~~may~~ **shall** record a document presented for recording or a copy produced by a photographic process of the document presented for recording if:

- (1) the document complies with other statutory recording requirements; and
- (2) the document or copy will produce a clear and unobstructed copy.

All copies accepted for recording shall be marked as copies by the recorder.

(f) An instrument, document, or copy received and recorded by a county recorder is conclusively presumed to comply with this section.

The copy has the same effect as if the original document had been recorded.

SECTION 10. IC 36-3-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) Liens for taxes levied by the consolidated city are perfected when ~~certified to the auditor of the county~~ **evidenced on the tax duplicate in the office of the treasurer of the county.**

(b) Liens created when the city enters upon property to make improvements to bring it into compliance with a city ordinance, and liens created upon failure to pay charges assessed by the city for services shall be certified to the auditor, after the adoption of a resolution confirming the incurred expense by the appropriate city department, board, or other agency. In addition, the resolution must state the name of the owner as it appears on the township assessor's record and a description of the property. ~~These liens are perfected when~~

1 ~~certified to the auditor.~~

2 (c) The amount of a ~~perfected~~ lien shall be placed on the tax
 3 duplicate by the auditor in the nature of a delinquent tax subject to
 4 enforcement and collection as otherwise provided under IC 6-1.1-22,
 5 IC 6-1.1-24, and IC 6-1.1-25. However, the amount of the lien is not
 6 considered a tax within the meaning of IC 6-1.1-21-2(b) and shall not
 7 be included as a part of either a total county tax levy under
 8 IC 6-1.1-21-2(g) or the tax liability of a taxpayer under IC 6-1.1-21-5
 9 for purposes of the tax credit computations under IC 6-1.1-21-4 and
 10 IC 6-1.1-21-5."

11 Page 5, after line 29, begin a new paragraph and insert:

12 "SECTION 11. **An emergency is declared for this act.**".

13 Renumber all SECTIONS consecutively.

(Reference is to SB 446 as reprinted February 16, 2004.)

and when so amended that said bill do pass.

Representative Hinkle